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AVIATION LAW — “INTERNATIONAL TRANSPORTATION” UNDER THE WARSAW CONVENTION — NINTH CIRCUIT HOLDS THAT A TRAVELER’S INDEPENDENTLY PURCHASED DOMESTIC FLIGHT IN A FOREIGN NATION WAS NOT A “SINGLE OPERATION” OF INTERNATIONAL TRAVEL UNDER THE WARSAW CONVENTION: *COYLE V. P.T. GARUDA INDONESIA*

SPENCER H. BROMBERG

The Warsaw Convention (“Convention”) governs “all international transportation of persons.”¹ Transportation is international when a passenger travels between two nations that are High Contracting Parties to the Convention.² Multiple stops on multiple carriers constitute international travel if the segments are regarded by the contracting parties as a “single operation” of “undivided transportation.”³ In *Coyle v. P.T. Garuda Indonesia*, the Ninth Circuit narrowly applied the definition of “international transportation,” holding that two sets of tickets on the same airline, one set international and the other set domestic, purchased at different times and places, do not constitute a “single operation.”⁴ The narrow holding in *Coyle* disregards the explicit text of the Convention and ignores the objective evidence presented by the tickets.⁵ Moreover, the holding ignores modern trends in travel planning, creating a loophole for airlines to selectively apply the Convention for separately purchased tickets that would otherwise be considered a “single operation,” while undermining the primary goal of the Convention—to harmonize and unify international aviation law.

¹ Convention for the Unification of Certain Rules Relating to International Transportation by Air, *opened for signature* Oct. 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11, *reprinted in* 49 U.S.C. § 40105 (2001) [hereinafter Warsaw Convention].

² Warsaw Convention, *supra* note 1, art. 1(2).

³ Warsaw Convention, *supra* note 1, art. 1(3).

⁴ *Coyle*, 363 F.3d 979, 986-93 (9th Cir. 2004) [hereinafter “*Coyle II*”].

⁵ *Id.* at 989-91.

On September 6, 1997, Fritz G. and Djoeminah Baden ("Badens") departed for Jakarta, Indonesia using tickets purchased through Astra World Express, Inc. ("Astra"), a Portland, Oregon travel agency.⁶ The tickets included multiple stops and passage on multiple airlines, traveling to and returning from Jakarta.⁷ While there was a dispute as to whether the Badens arrived in Jakarta on Garuda Indonesia Airlines ("Garuda"), it was undisputed that their flight leaving Jakarta was on Garuda.⁸

After arriving in Indonesia, the Badens contacted Garuda to purchase two additional round-trip tickets to extend their travels to Medan, Indonesia.⁹ The additional "Domestik" stop was scheduled to depart Jakarta on Garuda at 11:30 a.m. on September 26th.¹⁰ While the domestic return flight from Medan to Jakarta was left open, the subsequent international flight on Garuda was scheduled to depart Jakarta at 8:00 a.m. on September 30th, ultimately destined for Portland.¹¹ The Badens failed to make any of the return flights from Medan to Portland because, on approach to Medan, Garuda Flight 152 flew into the side of a mountain killing all 232 passengers on board.¹²

Joyce Coyle filed a claim against Garuda for the wrongful death of her parents under Article 17 of the Convention on September 22, 1999 in Oregon.¹³ Garuda moved to dismiss the case for lack of subject matter jurisdiction, claiming that the domestic leg was not part of a greater international itinerary covered by the Convention.¹⁴ On April 30, 2001, the magistrate judge issued his "Findings and Recommendation," concluding that the domestic flight was "one leg of an international journey," which, under Article 28 of the Convention, granted the federal district court in Oregon subject matter jurisdiction over the claim.¹⁵ The district court reviewed the rulings.¹⁶ After review,

⁶ *Id.* at 982.

⁷ *Id.*

⁸ *Id.*; *Coyle v. P.T. Garuda Indon.* 180 F. Supp. 2d 1160, 1163 & n.2 (D. Or. 2001) [hereinafter "*Coyle I*"].

⁹ *Coyle II*, 363 F.3d at 982.

¹⁰ *Id.* The method of payment does not affect the "single operation" determination. *Id.* at 991; *See* Warsaw Convention, *supra* note 1. Moreover, credit cards often complicate the purchase process in the cash driven societies of Southeast Asia.

¹¹ *Coyle*, 180 F. Supp. 2d at 1163.

¹² *Coyle*, 363 F.3d at 982.

¹³ *Id.* at 983 & n.4.

¹⁴ *Id.* at 983-84.

¹⁵ *Id.* at 984.

¹⁶ *Id.* n.7.

on June 28, 2001, the district court adopted the magistrate's report and scheduled the case for trial.¹⁷ Prior to oral argument, the Ninth Circuit granted Garuda's interlocutory appeal regarding federal subject matter jurisdiction.¹⁸

The Ninth Circuit reversed and remanded with instructions to dismiss the case for lack of subject matter jurisdiction.¹⁹ The court held that the district court erred in finding a "single operation."²⁰ To reach its holding, the court reasoned that 1) only the single contract domestic tickets purchased in Jakarta would be used to determine the parties' intent, and 2) the objective intent evidenced by the domestic ticket was that of a separate and independent side-trip with the final destination of Jakarta, not Portland.²¹

The first issue the court addressed was whether two independently purchased tickets could be used to determine the objective intent of the parties. The court acknowledged that "*to a limited degree*, certain objective evidence may connect flights together," but the tickets would need to be purchased at the same time and place for such a connection.²² To support this conclusion, the court referred to the Second Circuit's holding in *Petrire v. Spantax, S.A.*, where two sets of tickets, which were "issued sequentially at the same time and at the same place for round-trip travel," constituted a single contract for undivided transportation.²³ The court contrasted *Petrire* with *In re Air Crash Disaster at Warsaw, Poland on March 14, 1980*, where the court held that the extrinsic evidence provided by separately purchased domestic and international flights failed to show a "single operation."²⁴ In *In re Air Crash Disaster at Warsaw*, members of a group were to meet in New York from various domestic locations to embark on an international journey.²⁵ The domestic tickets were arranged and paid for by each individual, while the subsequent international tickets were arranged and paid for by the group leader.²⁶ The *In re Air Crash Disaster at Warsaw* court evaluated all tickets,

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 979, 994.

²⁰ *Id.* at 986-89.

²¹ *Id.*

²² *Id.* at 989 (citing *Petrire v. Spantax, S.A.*, 756 F.2d 263, 265 (2d Cir. 1985)).

²³ *Id.* (citing *Petrire*, 756 F.2d at 265).

²⁴ *Id.* (citing *In re Air Crash Disaster at Warsaw, Pol.*, Mar. 14, 1980, 748 F.2d 94, 96-97 (2d Cir. 1984)).

²⁵ *Id.* at 95.

²⁶ *Id.*

concluding that "not only would the passengers not be likely to have considered the flights as a single operation, . . . but the carriers could not have considered that they were successive."²⁷ Thus, the Ninth Circuit reasoned the parties' intent from the single contract domestic tickets.

The Ninth Circuit incorrectly concluded that only the single contract domestic flight should be used to show a "single operation." The Convention's explicit text states that a "single operation" may consist of a "contract or a series of contracts."²⁸ Contrary to the Convention's wording, the *Petrire* analysis requires a single "time and place of issuance" to constitute a "single operation."²⁹ Independently purchased tickets, which constitute a series of contracts, are excluded from the objective intent determination. The D.C. Circuit Court in *Haldimann v. Delta Airlines, Inc.* recognized the narrow interpretation of the *Petrire* analysis, noting that, "curiously, [the Second Circuit] appeared to assume that a single operation required that there be only one contract."³⁰ Moreover, the Ninth Circuit fails to distinguish *In re Air Crash Disaster at Warsaw* from the present case, where the court looked at both sets of tickets and determined that the evidence did not show that the domestic and international flights were regarded as a "single operation."³¹ Unlike the passengers in *In re Air Crash Disaster at Warsaw*, the Badens were not part of a scattered group meeting in a domestic location, arriving on different airlines, before embarking on a greater international journey.³² The tickets were handled, paid for, and issued on an individual basis; the domestic leg occurred after the international journey commenced; and the return flights on the same airline, ultimately destined for Portland, were successive.³³ Thus, the Ninth Circuit should have relied on both tickets, sufficiently linked by extrinsic evidence, rather than narrowly relying on the single contract domestic ticket.

The Ninth Circuit's second issue was to determine the objective intent of the parties from the relevant domestic tickets. The court reasoned that the unambiguous evidence failed to show a "single operation" because the domestic ticket had an open re-

²⁷ *Id.* at 97.

²⁸ Warsaw Convention, *supra* note 1, art. 1(3) (emphasis added).

²⁹ *Coyle*, 363 F.3d at 989 (citing *Petrire*, 756 F.2d at 265).

³⁰ *Haldimann v. Delta Airlines, Inc.*, 168 F.3d 1324, 1326 (D.C. Cir. 1999).

³¹ *In re Air Crash Disaster at Warsaw*, 748 F.2d at 95-97.

³² *Id.* at 95.

³³ *Coyle*, 363 F.3d at 982; *cf. In re Air Crash Disaster at Warsaw*, 748 F.2d at 94-97.

turn date, had no reference number or symbol to connect it to the return flights to Portland, and had been labeled "Domestik."³⁴ The court also concluded that the intended final destination of Portland was not dispositive of a "single operation," holding that there could be multiple final destinations on one "larger international journey."³⁵

The primary issue regarding the parties' intent was the lack of a connection to the greater international itinerary located on the domestic ticket. The court rejected the argument that domestic and international flights could be part of a single international itinerary without identifying information on the domestic ticket.³⁶ The *Haldimann* court noted that a record locator on each ticket was sufficient to connect two flights on different airlines.³⁷ Similarly, in *Vergara*, ticket booklets for flights on different airlines were sufficiently connected when, among other ordinary particulars, the tickets included a credit card number, an itinerary, and a place of origin and destination.³⁸ Additionally, the court found that a passport presented at ticketing did not give Garuda notice of the greater international itinerary.³⁹

The ticket labeled "Domestik," absent a connection to the international flight, was dispositive that the parties intended the flight as a domestic side-trip. The court rejected the district court's analysis that the label "Domestik" was of little relevance in determining intent.⁴⁰ The court concluded that, if the passengers could translate the term, they would be precluded from claiming that the trip was part of a greater international itinerary.⁴¹ To support this conclusion, the court distinguished *In re Air Crash Disaster of Aviateca Flight 901*, a case where the court discounted the importance of certain notations when "there is no reason to believe that the passengers had any idea what the significance of the . . . designations [were] or whether those designations conflicted with or were representative of their intentions when their tickets were issued."⁴² Unlike the arcane

³⁴ *Coyle*, 363 F.3d at 989-90.

³⁵ *Id.* at 991.

³⁶ *Id.* at 989-90.

³⁷ *Id.* (citing *Haldimann*, 168 F.3d at 1325).

³⁸ *Id.* (citing *Vergara v. Aeroflot "Soviet Airlines"*, 390 F. Supp. 1266, 1267-68 (D. Neb. 1975)).

³⁹ *Id.* at 993.

⁴⁰ *Id.* at 990.

⁴¹ *Id.*

⁴² *Id.* (citing *In re Air Crash Disaster of Aviateca Flight 901 Near San Salvador, El Sal.* On Aug. 9, 1995, 29 F. Supp. 2d 1333, 1342-43 (S.D. Fla. 1997)).

industry codes of "SITI" and "SOTO" on the tickets in *In re Air Crash Disaster of Aviateca 901*, the court reasoned that the label "Domestik" was not misleading, and must have been understood by the passengers.⁴³

Finally, the court found that the objective intent expressed by the tickets showed the final destination as Jakarta, not Portland. The court joined the Second and Fifth Circuits, holding that the parties' intent, expressed by the commercial tickets, "determine[s] both a traveler's destination and whether . . . transportation constituted a single operation of international travel."⁴⁴ Since the domestic tickets determined intent, the court rejected the facial inference that Portland, rather than Jakarta, was the final destination listed in the contract.⁴⁵ The court distinguished its earlier ruling in *Sopcak*, which allowed the use of "tickets and other instruments" to evidence a final destination.⁴⁶ The court noted that "other instruments" could be used in the absence of tickets, as occurs with chartered flights, but rejected the notion that both a ticket and an overall itinerary could be used together to contradict a final destination listed on the ticket.⁴⁷ Thus, the Ninth Circuit concluded that the passengers intended to engage in a domestic side-trip, not part of the international itinerary.⁴⁸

The court erred in determining the parties' intent from the tickets. The objective evidence presented by the domestic ticket was sufficient to connect the flight with an international segment destined for Portland. Despite the court's reference to the open ticket, all cases cited by the court stated that an open ticket constitutes a contract for return carriage and objectively shows intent to return.⁴⁹ Additionally, the domestic flights were connected to the greater international itinerary. The court's principle argument is that the Badens tickets lacked an identifier

⁴³ *Id.*

⁴⁴ *Id.* at 987.

⁴⁵ *Id.* at 991.

⁴⁶ *Id.* at 991-92.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 987-93; see *Klos v. Lotnicze*, 133 F.3d 164, 167 (2d Cir. 1997); *Petrize*, 756 F.2d at 265-66; *Swaminathan v. Swiss Air Trans. Co.*, 962 F.2d 387, 389 (5th Cir. 1992); *Lee v. China Airlines, Ltd.*, 669 F. Supp. 979, 981 (D.D. Cali. 1987); *Stanford v. Kuwait Airways Corp.*, 648 F. Supp. 657, 661 (S.D.N.Y. 1986); *Vergara*, 390 F. Supp. at 1266; *In re Alleged Food Poisoning Incident*, March 1984, 770 F.2d 3, 6-7 (2d Cir. 1985); *Gayda v. LOT Polish Airlines*, 702 F.2d 424, 425 (2d Cir. 1983).

present in both *Haldimann* and *Vergara*.⁵⁰ The court failed, however, to note that each case involved tickets on multiple air carriers. The additional identifiers required to link flights on different carriers acknowledged that each carrier had a unique infrastructure, ticketing policies and internal systems. In the present case, the domestic tickets and the subsequent international return flight destined for Portland were on Garuda. Moreover, two pieces of information connected the flights, the name on the ticket and the passport number. Unlike with different airlines, it is reasonable to assume that the computer system, with name and passport number, would highlight the return international flights on Garuda scheduled to depart four days later. Thus, Garuda scheduled the Badens domestic leg with knowledge it was connected to a greater international itinerary destined for Portland, Oregon.

The court incorrectly concluded that the term “Domestik” was understood by the Badens. The court’s comparison of “SITI/SOTO” and “Domestik” is misleading. Had the tickets not used “SITI/SOTO” and instead used “sale and issuance of the ticket occurred inside [/outside] the country of commencement,” passengers would have been able to read but not understand the implications under the Convention. Similarly, one can infer that “Domestik” means domestic without grasping Convention implications. The district court provided alternative interpretations, the most important being that domestic legs of international journeys are often labeled domestic, even though they constitute a “single operation” of undivided international transportation.⁵¹

Finally, the court incorrectly determined that the Badens’ final destination was Jakarta, not Portland. Ordinarily, courts have held that for the purposes of the Convention, a journey can have only one destination.⁵² The goal is to grant a passenger jurisdiction in the place of “principal and permanent residence.”⁵³ The Badens purchased the international tickets before they purchased the additional domestic tickets, evidencing Portland as their final destination. To conclude that the Badens intended any place but Portland as a final destination is wholly

⁵⁰ *Coyle*, 363 F.3d at 990.

⁵¹ *Coyle*, 180 F. Supp. 2d at 1166-67.

⁵² *Id.* at 1164.

⁵³ Convention for the Unification of Certain Rules for International Carriage by Air, *opened for signature* May 28, 1999, art. 33(2) ICAO Doc. 9740 [hereinafter *Montreal Convention*].

unreasonable. Moreover, Garuda knew or should have known the destination because they provided two sequential legs of the international journey home. Thus, the objective intent expressed by the tickets shows that the parties regarded the flights as a "single operation" with the final destination of Portland, Oregon.

The court's holding ignores modern trends in travel planning and subverts the goal to unify and harmonize international aviation law. The modern phenomena of "ticketless" travel and electronic ticketing may not provide passengers with the evidence necessary to show the parties' intent at the time of contract. Also, travelers increasingly purchase and modify tickets through online websites, acting as their own agent. If a passenger intended a single operation in one of these situations, he would be unable to avail themselves of Convention protection or would be unable to provide objective evidence in the event of an accident. At a minimum, the court's narrow interpretation would require educating the public on the need to link independently purchased tickets and require acknowledgement of the greater international itinerary. Otherwise, the increase in separately purchased tickets and "ticketless" travel would encourage "artful pleading" by the airlines "seeking to opt out of the Convention's liability scheme when local law promised recovery" less than that prescribed by the treaty, and may deny potential plaintiffs a suitable jurisdiction.⁵⁴ Lastly, the court's narrow interpretation thwarts the primary goal of the Convention to "achieve uniformity of rules governing claims arising from international air transportation."⁵⁵

A broad interpretation of the term "international transportation" protects passengers using modern ticketing methods and "enables international travelers to secure the benefits of the treaty regime even for segments of international transportation that are wholly within the territory of a signatory with a tort system far narrower than that of the treaty."⁵⁶ Moreover, a broad interpretation comports with the modern understanding of the Convention that with "the increasing strength of the airline industry, the balance has properly shifted away from protecting

⁵⁴ *El Al Isr. Airlines, Ltd., v. Tseng*, 525 U.S. 155, 171 (1999).

⁵⁵ *Tseng*, 525 U.S. at 169 (citing *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 532 (1991)).

⁵⁶ *Haldimann*, 168 F.3d at 1326.

the carrier and toward protecting the passenger.”⁵⁷ Finally, a broad interpretation further standardizes international aviation law. When the airlines have constructive notice of the greater international itinerary, separately purchased tickets for an international journey should constitute a “single operation.”

⁵⁷ *Tseng*, 525 U.S. at 171 n.12 (citing *Tseng v. El Al Isr. Airlines, Ltd.*, 122 F.3d 99, 107 (2d Cir. 1997)).



Comments

